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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael R. DeLuca

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IP GROUP OF DLA PIPER RUDNICK GRAY CARY US LLP
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EXAMINER

MCCRAW, BARRY CLAYTON

ART UNIT

PAPER NUMBER

3744

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/681,475	Applicant(s) DELUCA, MICHAEL R.	
	Examiner B. Clayton McCraw	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/6/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/6/2006 have been fully considered but they are not persuasive. The applicant argues that the Weber (US 5,839,654) reference fails to disclose a power coupler as well as a programmable controller ("Remarks", page 11). Regarding the power coupler, the examiner notes that the Weber reference does, in fact, disclose a programmable controller electrically coupled to a power coupler. An examination of Weber's Figure 4 clearly shows a control module electrically coupled to an A.C. power outlet. The "receiver" being an integral part of the programmable controller is explicitly electrically coupled to a power coupler.

The examiner also notes that the Weber reference does, in fact, disclose a programmable controller, as the Cambridge Advanced Learner's Dictionary defines "programmable" as 1: to instruct a device or system to operate in a particular way or at a particular time. Utilizing this definition, a "programmable" device can be any involving a user input that produces a desired outcome, and is not limited to the definition provided in the specification. Furthermore, assuming *arguendo* that the Weber reference does not disclose a programmable controller, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a programmable controller with the Weber device, as they are commonly used with thermostats of various sorts.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 11-13, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber (US 5,839,654). Weber explicitly teaches at least one power coupler (70 and 72; Figure 4) for removeably engaging a power connector (76-2 and 84; Figure 4) from the temperature modifying device (80); a programmable controller (col. 8, lines 47-49) electrically coupled to at least one power coupler (Figure 2; connection to 70) and programmed to control the operation (col. 3, lines 63-67) of at least one temperature modifying device (80) in response to the comparison of a measured ambient temperature with at least one set point temperature (col. 6, lines 25-30); at least one removeably engageable power coupler (72 in Figure 2; also see 160 in Figure 6) for electrically connecting the programmable controller (col. 8, lines 47-49) to a power supply (72); wherein the power supply and power coupler comprises an electrical outlet (col. 10, lines 40-43); wherein the temperature modifying device comprises one or more selected from the group consisting of an air conditioner and space heater (col. 3, lines 44-46); at least one outlet for removeably engaging the power connector from the temperature modifying device (76-2 and 84; Figure 4), the programmable controller electrically coupled to at least one electrical outlet (Figure 4 and Figure 6); a temperature comparator for comparing ambient temperature to set point temperature

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(30-1), and a remote temperature sensor in communication with the programmable controller for sensing ambient temperature (10).

The method steps recited in claim 20 will explicitly be performed through the normal use of Weber's device.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 6, 7, 14, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US 5,839,654). Weber explicitly teaches all of the aspects of the current invention as well as power couplers and outlets having the ability to individually control either a heating device or a cooling device (col. 9, lines 5-15).

Although Weber does not teach a plurality of power couplers or outlets, it only requires

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ordinary skill in the art to add additional power couplers in order to provide control over additional units.

Regarding claims 7, 15 and 19, Weber explicitly teaches a programmable controller programmed to activate a heating device if the temperature falls below a set point temperature and operate a cooling device if the temperature rises above a set point temperature (col. 5, lines 16-22).

6. Claims 8, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US 5,839,654) in view of Kath (5,927,599). Weber explicitly teaches all of the elements of the current invention as described above except for a temperature control program, a memory for storing the temperature control program and related information, and a device from the group consisting of a logic board, a microprocessor, and an integrated circuit. Kath explicitly teaches a temperature control program (col. 6, lines 8-26), a memory for storing the temperature control program and related information (col. 5, lines 24-27), and a device from the group consisting of a logic board, a microprocessor, and an integrated circuit (col. 5, lines 50-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the portable thermostat as taught by Weber with the temperature control program and accompanying hardware as taught by Kath since it is advantageous to utilize computer controls for enhancing a system.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

3. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Clayton McCraw whose telephone number is (571) 272-3665. The examiner can normally be reached on M-F 8:30AM-5:00PM.

5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BCM
4/18/2006



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